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Written Testimony Supporting House Bill No. 5060, An Act Concerning the Recording of Police Activity by the Public

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Distinguished members of the Judiciary Committee, I'm David McGuire, staff attorney for the American Civil Liberties Union of Connecticut, which supports House Bill No. 5060, An Act Concerning the Recording of Police Activity by the Public. The bill will enshrine into state law the public's constitutional right to record peace officers carrying out their official duties in public and will provide a state statutory cause of action against officers who violate that right.

Five years ago the Rev. James Manship, pastor of St. Rose of Lima Church in New Haven, was arrested after he recorded video of two East Haven police officers harassing a Latino store owner. The charges against him were eventually dismissed and in recent months we have seen those officers and two others convicted in federal court of civil rights violations, a very direct result of Father Manship's courageous decision to use his camera to document some of their crimes. In addition, as the result of the investigation sparked by that video, the East Haven Police Department operates under a court order specifically requiring its officers to respect the right of the public to record officers at their work.

The case illustrates well the public policy functions served by the legislation now before you. First, because it is derived from the freedom of speech and freedom of the press clauses of the First Amendment, the right to record serves the noble functions of that invaluable bulwark of our civil liberties. Second, because such recordings can provide crucial evidence at trial, the right to record serves the truth-seeking function of our justice system, protecting both citizens from erroneous convictions and officers from frivolous lawsuits. Third, because police brutality is a threat not only to our liberty but also to our safety, the right to record adds another layer of protection to the citizens of this state by serving as a deterrent for such conduct.

The standards on the right to record that are stated in the East Haven consent decree were not created for the occasion. That right is required by the U.S. Constitution and the decree serves to reaffirm the right for a department that needed reminding. Every police department in the state is bound to obey these rules. But over and over again, police departments do not. Too often police officers threaten and arrest bystanders for taking photographs and video of police activity, even when those bystanders are not interfering with the police in any way. When charges are dismissed and phones or cameras are returned, their photos and videos have often been erased. Even when bystanders are not arrested, police often confiscate their phones and cameras. At the ACLU of Connecticut we frequently get

complaints about such cases, and we have intervened to insist that police departments return phones and cameras.

Many other cases have been reported by the media, including several high-profile cases in New Haven, despite a police department policy that recognizes the public's right to record. In 2012, for example, Jennifer Gondola of Ansonia was arrested in New Haven after police seized the cell phone with which she had recorded a police sergeant subduing a suspect. A judge dismissed the charge of interfering with police against Gondola and the sergeant was suspended for improper use of force. In 2010, police threatened Yale University students for trying to record video of police subduing a student in a nightclub raid with a Taser. The police chief later reaffirmed the students' right to record, the charges against all five students who were arrested that night were dismissed, and the student who was Tasered is suing the city. In another incident that same year, Luis Luna of Wallingford was arrested for using his iPhone to record video of police arresting two men in New Haven. One of the arresting officers was an assistant chief of police who grabbed the phone out of Luna's hands and ordered another officer to arrest him. In the end, the assistant chief resigned, the charges against Luna were dropped and he's now suing the city for violating his rights.

If enacted, House Bill 5060 will stem this blatant disregard for the First Amendment. It will serve to protect citizens from police misconduct, as well as to protect officers from false accusations of the same. It strikes the proper balance between citizens' First Amendment rights and an officer's duty to protect and serve. It is good policy and necessary, because it will enshrine into statute what has already been clearly established in case law: that citizens have a right to record peace officers carrying out their official duties in public, and if an officer violates that right he or she is civilly liable.